No. 81-48

Office - Supreme Court, U.S.
FILED
OCT 7 1981
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACK KEELER and GRACE KEELER, et al.,
Petitioners,

—against—

DANIEL W. JOY, individually and as Commissioner of the office of Rent and Housing Maintenance of the City of New York Department of Housing, Preservation and Development,
Respondent.

PETITIONERS' REPLY BRIEF

TOBY GOLICK
LEGAL SERVICES FOR THE ELDERLY
132 West 43rd Street, 3rd Fl.
New York, New York 10036
(212) 391-0120

JOHN C. GRAY, JR.
(PATRICK J. COONEY, Of Counsel)
BROOKLYN LEGAL SERVICES CORP. B.
105 Court Street
Brooklyn, New York 11201
(212) 855-8003

Attorneys for Petitioners

(Additional attorneys on inside cover)

Of Counsel:

TELFORD TAYLOR
60 East 42nd Street
New York, N. Y. 10017
(212) 661-0930

JOHN KIRKLIN
(JAMES FRANCIS, Of Counsel)
LEGAL AID SOCIETY
11 Park Place
New York, New York 10007
(212) 227-2755

MARSHALL GREEN
LEGAL AID SOCIETY
1685 East 15th Street
Brooklyn, New York 11229
(212) 645-3111

ARNOLD ROTHBAUM
(GARY CONNOR, Of Counsel)
BROOKLYN LEGAL SERVICES CORP. A
260 Broadway
Brooklyn, New York 11211
(212) 782-6195

PETITIONERS' REPLY BRIEF

Petitioners respectfully submit that it is plain, on the face of respondent's brief in opposition, that summary judgment for respondent was erroneously granted, and that the error was of constitutional dimension because the factual issues are of constitutional dimension.

The brief in opposition is almost exclusively concerned with the procedures that are supposed to be employed in these eviction cases, rather than with what actually happens. Only in the last two pages (pp. 17-18) of his brief does respondent even purport to deal with the crucial question: was summary judgment properly granted? Respondent's brief's terminal paragraphs on the basic issue concede (p. 17) that the record before the district court contained "areas of remaining dispute" involving "facts."

Respondent describes these areas as "few" and as "quibbles," but these adjectives are no answer to Judge Kearse's meticulous specification of the nature of these "areas" (Pet. pp. A-34-40).[1]

Respondent asserts that petitioner, by moving as plaintiff for summary

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[1] Judge Tenney also recognized that there were "unresolved" factual issues, but he declared that they "fail to rise to constitutional proportions" (Pet. p. A-25). But even if, as he states (ibid), a "full blown evidentiary hearing is not constitutionally required," such issues as whether oral conferences are in fact always held, whether the notices sent in fact lull the recipients instead of alerting them, whether evidence is received on behalf of a party though never shown to the adverse party, and whether cross examination of adverse witnesses is denied, are undeniably of constitutional dimension.

judgment, conceded that there are no issues of fact. That is obviously absurd, for petitioners' effort below to establish that there was no evidence to contradict their claim certainly involved no concession that there was no evidence in their support. And, as Judge Kearse stated in her dissent (Pet. p. A-32):

> in assessing plaintiffs' motion, the court was required to resolve all ambiguities and draw all legitimate inferences against the plaintiffs. But it could not then use these unfavorable resolutions and inferences to justify entry of judgment against plaintiffs as a matter of law. In order to determine whether the Commissioner is entitled to judgment as a matter of law, any disputes as to material facts must be resolved in favor of the Tenants.

Petitioner emphatically agrees with respondent's observation (p. 15) that

"a landlord's right to possession is related to constitutionally protected rights to property." The fact that in this particular case the plaintiffs are tenants should not erroneously color the issue as one of tenants' rights against landlords; the latter may suffer just as much from sloppy failures to observe the rudiments of due process. Furthermore, the practices challenged here do not even have the virtue of speed. Administrative procedures in the petitioners' cases took from five months to over a year to be completed; the changes petitioners seek (e.g., notice, opportunity to rebut adverse evidence) would not make the existing procedures more time-consuming or expensive, but only more fair to both tenants and landlords.

Petitioners contend that since the challenged eviction procedures always involve factual issues (whether the landlord is proceeding in good faith and, if applicable, whether the landlord has an immediate and compelling necessity for the apartment) which are finally determined at the administrative level, due process requires personal contact between the parties and the decision maker, an opportunity to confront and question adverse witnesses, to inspect documentary submissions and to file rebuttal material, as well as adequate notice. These critical due process rights are now denied to both the landlords and tenants of over 400,000 rent controlled apartments in the City of New York by virtue of a decision with far-reaching ramifications for other administrative agencies.

Petitioners suggest that there is no need for argument in this Court in a case where factual issues of constitutional dimension are plainly present, and their exploration in the district court has been erroneously aborted by summary judgment. Accordingly, we respectfully move this Court to reverse the judgment below and remand the case to the district court so that it may proceed to trial.

Dated: October 5, 1981

Respectfully submitted,

TOBY GOLICK
LEGAL SERVICES FOR THE ELDERLY
132 W. 43rd Street, 3d Fl.
New York, New York 10036
(212) 391-0120

TELFORD TAYLOR
60 East 42nd Street
New York, New York 10017
(212) 661-0930

JOHN C. GRAY, JR.
(PATRICK J. COONEY,
Of Counsel)
BROOKLYN LEGAL SERVICES
CORP. B.
105 Court Street
Brooklyn, New York 11201
(212) 855-8003

JOHN KIRKLIN
(JAMES FRANCIS, Of Counsel)
LEGAL AID SOCIETY
Civil Appeals & Law Reform
Unit
11 Park Place
New York, New York 10007
(212) 227-2755

MARSHALL GREEN
THE LEGAL AID SOCIETY
1685 East 15th Street
Brooklyn, New York 11229
(212) 645-3111

ARNOLD ROTHBAUM
(GARY CONNOR, Of Counsel)
BROOKLYN LEGAL SERVICES
CORP. A
260 Broadway
Brooklyn, New York 11211
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